

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA MARÍA MALLORY  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB 13-108**

**BURNICE STACKHOUSE,  
Claimant-Petitioner,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF PUBLIC WORKS,  
Self-Insured Employer-Respondent.**

Appeal from an August 9, 2013 Compensation Order By  
Administrative Law Judge Fred D. Carney Jr.,  
AHD No. PBL 06-016A, DCP No. 761929-0001-1999-9937

Matthew J. Peffer, for Claimant-Petitioner  
Frank McDougald, for Self-Insured Employer-Respondent

Before LAWRENCE D. TARR, *Chief Administrative Appeals Judge* and HENRY W. MCCOY and  
JEFFREY P. RUSSELL, *Administrative Appeals Judges*.

LAWRENCE D. TARR, *Chief Administrative Appeals Judge*, for the Compensation Review Board

**DECISION AND ORDER**

This case is before the Compensation Review Board (CRB) on the request for review filed by Claimant - Petitioner (Claimant) of the August 9, 2013, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Hearings and Adjudication Section of the District of Columbia Department of Employment Services (DOES).

In that CO, the ALJ held Claimant cannot receive workers' compensation benefits from September 11, 2012 until October 10, 2012, the period Employer withheld benefits because Claimant refused to an Additional Medical Examination (AME) with Dr. David Johnson.

The only issue before the CRB is whether Claimant is entitled to payment of benefits during the period that he refused to attend an AME. The ALJ held Claimant is not entitled to those benefits. We AFFIRM.

## BACKGROUND AND FACTS OF RECORD

Mr. Burnice Stackhouse, a sanitation worker for the District of Columbia Department of Public Works (Employer) sustained a work related injury to his left ankle and back on May 27, 1993 when he stepped into an open drain while leaving a fast-food restaurant where he had stopped to take a bathroom break. Claimant has not returned to work since the 1993 accident.

Employer accepted his claim for workers' compensation benefits. Claimant's benefits were terminated in December 1993 and then ordered reinstated. *Stackhouse v. D.C. Department of Public Works*, OHA No. PBL 98-046(A) OBA No. 352340, (April 6, 2001). His benefits again were terminated on March 20, 2009, and again reinstated. *Stackhouse v. D.C. Department of Public Works*, AHD PBL No. 09-016, DCP No. 7610200011999-0037 (September 29, 2009).

On September 6, 2012, Claimant was scheduled to attend an AME with Dr. David Johnson, an orthopedic surgeon. Claimant was notified of the examination by regular and certified mail. Claimant failed to claim the certified letter and it was returned to Employer. The letter sent by regular mail was not returned to Employer.

Claimant did not attend the September 6, 2012, examination with Dr. Johnson. Employer sent Claimant a letter notifying him that his benefits were suspended. Claimant, after receiving this letter, contacted Employer and as a result, another AME with Dr. Johnson was scheduled for October 11, 2012. Claimant attended this examination and Employer reinstated Claimant's benefits on October 11, 2012.

Claimant filed a claim seeking payment for the period that his benefits were suspended, September 6, 2012 through October 11, 2012. After a formal hearing, the ALJ found that Claimant received notice of the first AME. This finding is not challenged on review. The ALJ further held Claimant was not entitled to receive benefits during the period he refused to attend the AME.

Claimant timely appealed the ALJ's decision.

## STANDARD OF REVIEW

The CRB reviews an ALJ's decision to determine whether the factual findings of the CO are based upon substantial evidence and whether the legal conclusions drawn from those facts are in accordance with applicable law. See, D.C. Comprehensive Merit Personnel Act of 1978, as amended, D.C. Code §§ 1-623.01 *et seq.*, ("Act") at § 1-623.01. "Substantial evidence" is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003). Thus, the CRB "may not consider the evidence *de novo* and make factual findings different from those of the [ALJ]." *Id.*

The CRB is bound by an ALJ's findings of fact even though we may have reached a contrary result based on an independent review of the record. If substantial evidence exists to support the

ALJ's findings, the existence of substantial evidence to the contrary does not permit us to substitute our judgment for that of the ALJ. We may reverse an ALJ's decision only when it is unsupported by substantial evidence or is otherwise legally incorrect. *Id.* at 885-86.

The CRB will uphold a CO that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

### DISCUSSION AND ANALYSIS

The issue before the CRB is whether Employer is required to pay Claimant for the time that benefits were suspended for refusing to attend the AME after Claimant cured his refusal by attending the rescheduled AME.

On review, Claimant asserts that the ALJ's decision is wrong because once he cured his refusal to attend the AME, "the suspension was terminated and the statute dictates that Mr. Stackhouse is entitled to receive the benefits he would have otherwise been entitled to from September 11, 2012 to October 12, 2012."

In support of his argument, Claimant primarily relies on the definition of the word "suspend" found in the Merriam-Webster Online Dictionary<sup>1</sup>:

To debar temporarily especially from a privilege, office, or function, to cause to stop temporarily, to set aside or make temporarily inoperative, to defend [sic] to a later time on specified conditions, or to hold in an undetermined or undecided state awaiting further information.

Claimant further argues that the Act and the regulations support his argument and that by permitting Employer to not pay Claimant for the period of his refusal "the Compensation Order has not so much suspended Mr. Stackhouse's benefits but instead given the (employer) a holiday from paying those benefits."

Employer argues that the Act "does not include any language that provides that Claimant is entitled to the benefits not paid to him during the period of the suspension" and that the Compensation Order is consistent with precedent.

D.C. Code § 1-623.23(a) requires injured employees to submit to a physical examination by a physician chosen by Employer. This Code section further states in (a-3)(d):

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<sup>1</sup> It should be noted that this dictionary has other definitions of "suspend" that may not support Claimant's argument. For example, the dictionary states that when used as an intransitive verb, one definition is "to stop payment or fail to meet obligations."

If an employee refuses to submit to or obstructs an examination, his or her right to compensation under this subchapter is suspended until the refusal or obstruction stops. Compensation is not payable while a refusal or obstruction continues, and the period of obstruction or refusal is deducted from the period for which compensation is payable to the employee.

The Act does not specifically state whether Employer is required to pay Claimant for the period of time benefits were suspended after a claimant cures his refusal to attend an AME. However, by requiring that “the period of obstruction or refusal is deducted from the period for which compensation is payable to the employee” the Act implicitly provides that the benefits which were suspended because of a refusal are not paid upon the curing of that refusal, since they must be deducted from all benefits owed.

Moreover, 7 DCMR § 124.9 states that Claimant’s benefits are reinstated as of the date of compliance:

If Claimant attends a newly scheduled appointment, provides requested records, or otherwise cooperates with the examination as directed by the Program, Claimant's benefits shall be reinstated as of the date of compliance. The date of compliance is the date Claimant attends the newly scheduled appointment, the date the Program receives requested records, or the date Claimant otherwise cooperates with the examination as directed by the Program.

#### CONCLUSION

The August 9, 2013 Compensation Order is supported by substantial evidence and is in conformance with the law and is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

/s/ Lawrence D. Tarr  
LAWRENCE D. TARR  
*Chief Administrative Appeals Judge*

December 12, 2013  
DATE